

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**FELICIA MARTINEZ, et al.,**

**Plaintiffs,**

**V.**

**CITY OF DALEVILLE, et al.,**

**Defendants.**

) ) ) ) ) ) ) ) ) )

**CIVIL ACTION NO.: 1:06-CV-636-VPM**

**MOTION TO DISMISS OR IN THE ALTERNATIVE**  
**FOR SUMMARY JUDGMENT**

COMES NOW, Sheriff Lamar Glover, individually and in his official capacity as Sheriff of Houston County, Defendant in the above-styled cause, pursuant to Rule 12 of the Federal Rules of Civil Procedure and move this Honorable Court to dismiss this action for failure to state a claim upon which relief can be granted. In the alternative, said Defendant moves this Honorable Court for an Order under Rule 56, of the Federal Rules of Civil Procedure, dismissing Plaintiffs' claims against said Defendant and as grounds therefor assert that there is no genuine issue of material fact and that said Defendant is entitled to judgment as a matter of law. In support hereof said Defendant submits the following:

1. Plaintiffs' complaint as filed in this cause.

2. The Affidavit of Lamar Glover as attached to this Motion as Exhibit A, which is incorporated herein by reference as if fully set forth.
3. The BRIEF OF SHERIFF LAMAR GLOVER IN SUPPORT OF HIS MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT filed simultaneously herewith.
4. Sheriff Lamar Glover is entitled to the protection of qualified immunity on all of the plaintiffs' constitutional claims (Count I-III). Plaintiffs have no evidence that Sheriff Lamar Glover personally or directly participated or otherwise violated any clearly-established constitutional standard at any time during the search at issue.
5. Plaintiffs' 42 U.S.C. §§ 1985 and 1986 claims (Counts IV and V) fail as a matter of law because plaintiffs fail to allege that a racial or other class-based invidiously discriminatory animus lay behind the alleged conspirators' actions. These claims also fail for lack of evidence that Sheriff Lamar Glover conspired with anyone to violate plaintiffs' constitutional rights.

WHEREFORE, said Defendant respectfully moves this Honorable Court for an order pursuant to either Rule 12 or Rule 56 of the Federal Rules of Civil Procedure, dismissing Plaintiffs' claims against said Defendant.

Respectfully submitted this the 8th day of January, 2007.

**s/Gary C. Sherrer**

Gary C. Sherrer

Bar Number: SHE016

Attorney for Defendant Sheriff Lamar Glover

OF COUNSEL

SHERRER, JONES & TERRY, P.C.  
335 West Main Street  
Dothan, Alabama 36301  
Phone: (334) 678-0100  
Fax: (334) 678-0900  
E-mail: gary@sjt-law.com

**CERTIFICATE OF SERVICE**

I, Gary C. Sherrer, hereby certify that on this 8th day of January, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Jay Lewis, Esq.  
Law Offices of Jay Lewis, LLC  
P.O. Box 5059  
Montgomery, Alabama 36103

Keith Anderson Nelms, Esq.  
Law Offices of Jay Lewis, LLC  
P.O. Box 5059  
Montgomery, Alabama 36103

**s/Gary C. Sherrer**  
OF COUNSEL